

BEFORE THE

**Federal Communications Commission**

WASHINGTON, D.C. 20554

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 FEDERAL COMMUNICATIONS COMMISSION  
 OFFICE OF THE SECRETARY

In the Matter of )

Advanced Television Systems And Their )  
 Impact Upon The Existing Television Service )

MM Docket No. 87-268

To: The Commission

**COMMENTS OF JOVON BROADCASTING CORPORATION**

Jovon Broadcasting Corporation ("Jovon"), licensee of television station WJYS(TV) channel 62, Hammond, Indiana, by its counsel, respectfully submits the following comments in opposition to the recent ex parte submission of the Association for Maximum Service Television, Inc. ("MSTV") in the above-captioned proceeding.<sup>1</sup> While the MSTV Submission proposes the reassignment of more than 350 digital television ("DTV") allotments to resolve the interference and spectrum congestion dilemmas of the FCC's DTV assignment/allotment table<sup>2</sup>, ironically, the MSTV neglected to reassign the DTV allotment

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<sup>1</sup>Ex parte Submission Based on New Technical Discoveries to Help the Commission Improve the DTV Table of Allotments/Assignments, Association for Maximum Service Television, Inc. and Other Broadcasters, in MM-Docket No. 87-268 (November 20, 1997) ("MSTV Submission"). By Public Notice, released December 2, 1997, the Commission authorized the filing of additional comments in response to the MSTV Submission.

<sup>2</sup>See Sixth Report and Order, FCC-97-115. (Rel. April 21, 1997) ("6th DTV Order"), Appendix B, Table 1.

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for WJYS -- the very solution that would enable WJYS to compete fairly in the delivery of new DTV service.

In adopting the DTV table of allotments, the Commission emphasized the need, to adopt an approach that provides for a high degree of service replication by all stations, while at the same time ensuring that all stations are able to provide DTV service competitively within their respective markets.<sup>3</sup>

The Commission also stressed that, in the accomplishment of DTV service,

it is important to continue to foster our longstanding broadcast policy goals of diversity and encouraging new entry, particularly by minorities and women.

The MSTV Submission, like the FCC's 6th DTV Order, proposes to assign WJYS DTV channel 36.<sup>4</sup> Contrary to established Commission goals and policies, this channel assignment threatens severely WJYS' opportunity to compete meaningfully in the new industry of digital television.

WJYS, a minority-owned broadcast station, is located in the Chicago, Illinois DMA and is one of 12 commercial, for-profit television stations which compete in that market.<sup>5</sup> All of WJYS' competitors will operate from the antenna farm located at the Sears and Hancock Buildings in downtown Chicago and will provide DTV service to over 8,000,000 people. Spacing restrictions associated with co- and adjacent- channel facilities currently

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<sup>3</sup>6th DTV Order at ¶ 30 (emphasis added)

<sup>4</sup>MSTV Submission, Attachment 1A at 16.

<sup>5</sup>The others are WBBM-TV (NTSC Ch. 2); WCFC-TV (NTSC Ch. 38); WCIU-TV (NTSC Ch. 26); WEHS-TV, Aurora, Illinois (NTSC Ch. 60); WFLD-TV (NTSC Ch. 32); WBGO-TV, Joliet, Illinois (NTSC Ch. 66); WGN-TV (NTSC Ch. 9); WLS-TV (NTSC Ch. 7); WMAQ-TV (NTSC Ch. 5); WPWR-TV, Gary, Indiana (NTSC Ch. 50); and WSNS-TV (NTSC Ch. 44). Television and Cable Factbook, 1997 Edition, p. A-371. WWTO-TV, licensed to LaSalle, Illinois (over 50 miles from Chicago), but also included in the market, is a non-profit affiliate of Trinity Broadcasting Network.

prevent the station from operating from the Sears or Hancock building locations. The orientation of Chicago antennas toward those locations further precludes WJYS from competing from its currently required site for DTV operation. By virtue of the DTV allotment assigned by the MSTV Submission, WJYS is denied the opportunity to offer DTV service to the entire Chicago market. The station will be forced to compete against stations who can serve a consumer base that is at least 1,000,000 people larger than that which WJYS can reach.

The disproportionate nature of this disadvantage plainly disserves the Commission's stated objectives and goals. An allotment that denies WJYS access to 15-20% of its market, while its competition can freely serve 100% of the market, is the very antithesis of "ensuring that all stations are able to provide DTV service competitively within their respective markets." That the broadcast service of a minority-owned licensee would be impacted so severely further demonstrates the danger in adopting the MSTV Submission. Preventing the station's ability to adequately serve its whole market does not foster or support the Commission's longstanding policy goals of diversifying media ownership.

To resolve the difficulties caused by its DTV allotment, Jovon has proposed that WJYS be reassigned to DTV channel 64.<sup>6</sup> An amendment to the MSTV Submission which incorporates such a reallocation would cure its fatal defect. As demonstrated in the Jovon Petition, WJYS' use of DTV channel 64 would have significant, far-reaching public benefits. The relocation of the station's antenna to the Sears and Hancock Buildings would permit the

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<sup>6</sup>See Petition of Jovon Broadcasting Corporation for Reconsideration, filed in MM Docket No. 87-268 (June 13, 1997) ("Jovon Petition").

station to serve the Chicago market completely. Consistent with the Commission's attempt to preserve low power television service where possible,<sup>7</sup> the station's reallocation to DTV channel 64 would avoid a disruption of service for low power station W36AO.<sup>8</sup> Further, the new allotment would ensure that the DTV spectrum is used efficiently through the fostering of diversified ownership and would enable the centralization of all Chicago market commercial stations at the downtown antenna farm.

Further, the allotment of DTV channel 64 to WJYS would not be inconsistent with the MSTV Submission's allotment plan.<sup>9</sup> The reallocation would create no interference to other broadcast facilities and, in particular, would not impact adversely the MSTV's proposal to reassign the channel allotment of WGBO-TV, Joliet, Illinois, from DTV channel 53 to DTV channel 65.<sup>10</sup> Any interference from WGBO-TV's first-channel adjacent relationship would be remedied through the relocation of the WJYS antenna to the downtown antenna farm.<sup>11</sup>

The reallocation of DTV channel 64 to WJYS would be compatible with the DTV allotment/assignment plans of both the FCC and MSTV. Use of this DTV channel would permit WJYS to compete fairly with other commercial broadcasters in its market and generate significant public benefit. Without a reallocation, WJYS' chances to provide DTV

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<sup>7</sup>See 6th DTV Order at ¶¶ 141-147.

<sup>8</sup>Jovon Petition at 4.

<sup>9</sup>See Engineering Statement of Kevin T. Fisher, attached as Exhibit 1 ("Fisher Statement").

<sup>10</sup>MSTV Submission, Attachment 1A at 15.

<sup>11</sup>See Fisher Statement.

broadcast service effectively throughout the Chicago market are virtually eliminated. In these circumstances, a DTV channel reallocation is warranted.

For the above described reasons, Jovon strongly urges that the Commission allot DTV channel 64 to WJYS. Further, Jovon opposes strenuously Commission adoption of the MSTV Submission as currently proposed. If the Commission, nonetheless, elects to adopt the proposals and improvements offered in the MSTV Submission, Jovon respectfully requests that the allotment for WJYS should be changed from DTV channel 36 to DTV channel 64.

Respectfully submitted,

JOVON BROADCASTING CORPORATION



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Its Counsel

Dated: December 17, 1997

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## SMITH AND FISHER

## ENGINEERING STATEMENT

The engineering data contained herein have been prepared on behalf of JOVON BROADCASTING CORPORATION ("Jovon"), licensee of Television Station WJYS(TV), Channel 62, Hammond, Indiana, in support of its response to the *ex parte* submission of November 20, 1997, filed by Maximum Service Television, Inc. ("MSTV"), regarding the FCC's digital television (DTV) table of assignments

The FCC, in its *Sixth Report and Order* regarding DTV assignments (MM Docket No. 87-268), proposed the assignment of DTV Channel 36 to WJYS. Jovon filed a Petition for Reconsideration of that assignment and asked instead that DTV Channel 64 be assigned to WJYS so that the station could be located within the Chicago "antenna farm" in order to better serve its market's audience. In its submission, MSTV proposes to modify the FCC's table of DTV assignments in order to ameliorate interference caused by DTV-to-DTV first-adjacent-channel shortspacings in various parts of the United States. In doing so, MSTV did not include Jovon's requested channel change.

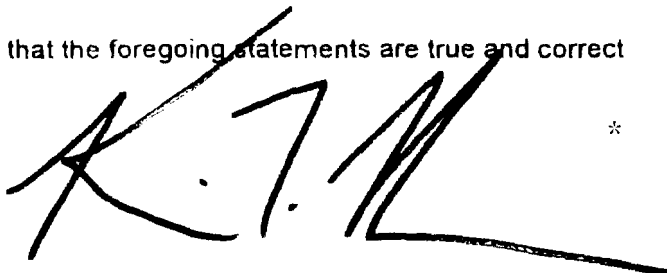
Therefore, Jovon opposes the proposed "Improvements to the (FCC's) DTV Table (of Assignments)" in Exhibit 1A of the above-referenced MSTV submission, with specific regard to the allotment of DTV Channel 36 to WJYS since this channel continues to be unusable at the Chicago antenna farm due to a short-spacing to NTSC Channel 36 in Milwaukee, Wisconsin.

Jovon continues to support the assignment of DTV Channel 64 to WJYS. Such an assignment would not be inconsistent with either the FCC's or MSTV's assignment table. It is important to note that MSTV proposes to change the DTV assignment of WGBO-TV in Joliet, Illinois, from Channel 53 to Channel 65, presumably to cure an interference problem in

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the Chicago area. Since WGBO-TV presently operates from the John Hancock Center (part of the Chicago antenna farm) and presumably would operate its DTV facility from there as well, the co-location of the WJYS DTV facility on Channel 64 with that of WGBO-TV would not cause significant predicted first-adjacent-channel interference.

I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge and belief.

A handwritten signature in black ink, appearing to read 'K. T. Fisher', with a long horizontal stroke extending to the right.

KEVIN T. FISHER

December 17, 1997

\*Facsimile statement -- original to follow.

## **CERTIFICATE OF SERVICE**

I, Annette M. Lach, a secretary at the law firm of Fleischman and Walsh, L.L.P. hereby certify that copies of the foregoing Comments of Jovon Broadcasting Corporation were served this 17th day of December 1997, via regular mail, upon the following:

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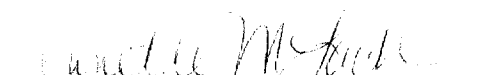
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\*Via hand delivery